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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDWARD MAKARON, on behalf of himself) Case No. 2:15-cv-05145-DDP-E
and all others similarly situated,)
Plaintiff,) **DECLARATION OF ADRIAN R. BACON**
vs.) **IN SHOWING OF GOOD FAITH**
) **COMPLIANCE WITH F.R.C.P.**
) **15(a)(1)(B)**

ENAGIC USA, INC.,
Defendant.

I, ADRIAN R BACON, DECLARE AND STATE AS FOLLOWS:

1. I, Adrian R. Bacon, am filing this Declaration in showing good cause to file a First Amended Complaint in this matter, pursuant to F.R.C.P. 15(a)(1)(B). I have personal knowledge of the facts stated in my declaration. These facts are true, to the best of my knowledge. If called as a witness, I would testify to the facts in my Declaration.

2. I am licensed to practice law in the State of California. I am also licensed to

1 practice law in the Northern District of California, the Southern District of California, the
2 Eastern District of California, and the Central District of California. I am also admitted to
3 practice law before the Ninth-Circuit Court of Appeals.

4 3. My firm, Law Offices of Todd M. Friedman, P.C., are the attorneys of record for
5 Plaintiff Edward Makaron in this matter.

6 4. On or about August 21, 2015, Defendant filed a Motion to Dismiss this matter,
7 under F.R.C.P. 12(b)(6) for failure to state a claim.

8 5. During the time which Defendant filed its Motion, my office was undergoing
9 changes to its file and email server, stemming from a structural change with the firm's business
10 partnerships. Unfortunately, during the time these changes took place, our firm experienced a
11 sudden and unanticipated blackout of our email system, such that no member of our firm was
12 able to receive emails from outside of our server, including notifications sent through the ECF
13 notification system.

14 6. Additionally, after discussing with my colleagues, counsel for Defendant never
15 met and conferred with either myself, the managing partner Todd M. Friedman, or my colleague
16 Suren N. Weerasuriya, prior to filing a Motion to Dismiss, as required under Local Rule 7-3 for
17 the filing of any Motion in the Central District of California.

18 7. As such, our firm was neither on notice that Defendant intended to file a Motion
19 to Dismiss, nor did we receive a notification of its electronic filing, and thus, were neither
20 served, nor constructively served with a copy of the Motion.

21 8. My office became aware of the instant Motion only much later, when our head
22 paralegal, Erika Campany, undertook efforts to review each and every docket for a pending case
23 being handled by our firm, in order to ensure that no deadlines had been missed, and that all
24 motions and hearings were properly calendared.

25 9. The parties thereafter stipulated to continue the hearing on Defendant's Motion
26 to Dismiss (Dkt No. 14) in part on the basis that Plaintiff's counsel had experienced an email
27 blackout and never received notice of, nor was served with Defendant's Motion.

28 10. F.R.C.P. 15(a)(1)(B) states, in pertinent part, as follows: "if the pleading is one
to which a responsive pleading is required, 21 days after service of a responsive pleading or 21
days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier."

11. As Plaintiff was never served with a copy of Defendant's Motion, I would submit

1 that Plaintiff's First Amended Complaint is not untimely, per the permissible requirements
2 under F.R.C.P. 15(a)(1)(B). Alternatively, I humbly request that the Honorable Court permit
3 Plaintiff to file the contemporaneously filed First Amended Complaint, as counsel's
4 untimeliness resulted from our experience of a server blackout whereby we never received
5 notice of the filing of Defendant's Motion, and is thus in good faith and excusable neglect.

6 I declare under penalty of perjury that the foregoing is true and correct. Executed on
7 September 21, 2015, in Costa Mesa, California, pursuant to the laws of California.

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9 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

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11 By: /s/ Adrian R. Bacon
12 Todd M. Friedman
13 Adrian R. Bacon
14 Law Offices of Todd M. Friedman
15 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

Filed electronically on this 21st day of September, 2015, with:

United States District Court CM/ECF system

Notification sent electronically on this 21st day of September, 2015, to:

Honorable Judge Dean D. Pregerson

United States District Court

Central District of California

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

FRED R. PUGLISI

JAY T. RAMSEY

GARDERE WYNNE SEWELL

DWIGHT M. FRANCIS

Attorneys for Defendant

ENAGIC USA, INC.

s/Adrian R. Bacon

Adrian R. Bacon